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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEFAN MOLL,
GERHARD BOCK,
DIRK MOELLER, and
SANDOR DOLGOS

Appeal 2010-001747
Application 10/797,354
Technology Center 3600

Decided: May 4, 2010

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge,* ANTON W. FETTING, and BIBHU R. MOHANTY, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Stefan Moll, Gerhard Bock, Dirk Moeller, and Sandor Dolgos (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-20, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION[1]

We REVERSE.

THE INVENTION

The Appellants invented a dialysis station using a central server and a patient place, where one can monitor the treatment at each patient place from a physician place and intervene into this treatment, and where a dialogue between the physician place and the patient place is possible via a data network (Specification 2:7-11).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. A dialysis system for implementing a course of treatment for a patient as instructed by a medical personnel and executed by a person, the dialysis system comprising:
>
> [1] at least one patient place having

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[1] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed April 3, 2009) and Reply Brief ("Reply Br.," filed August 24, 2009), and the Examiner's Answer ("Ans.," mailed June 24, 2009).

a dialyzer,

a video terminal, and

an ID input device for inputting an identification;

[2] a central server including a data base; and

[3] at least one physician place equipped with a video terminal,

[4] said video terminals of the at least one patient place and the at least one physician place and the server being interlinked with each other and configured such that

information on the course of the treatment at a selected patient place is callable and

instructions for a selected patient place are adapted to be input;

[5] wherein the system is configured such that

information on the execution of an instruction can be input at the patient place and

the execution of an instruction is acknowledged

by the executing person acknowledging his or her identity at the ID input device.

THE REJECTION

The Examiner relies upon the following prior art:

Hogard	US 6,284,131 B1	Sep. 4, 2001
Ford	US 6,269,340 B1	Jul. 31, 2001
Fujimoto	US 5,339,821	Aug. 23, 1994

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hogard, Ford, and Fujimoto.

ISSUE

The issue of whether the Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 103(a) as unpatentable over Hogard, Ford, and Fujimoto turns on whether the art describes or shows that a system configuration in which execution of an instruction is acknowledged by the executing person acknowledging his or her identity at an ID input device (limitation [5] *supra*). This issue reduces down to whether the Examiner's construction of the word "acknowledged" was reasonable in light of the Specification. The Examiner effectively construed "acknowledging" as implied.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Hogard

01. Hogard is directed to improvements in kidney dialysis machines. Hogard 1:13-14.

Ford

02. Ford is directed to customizable drug library software for infusion pumps that acts either by itself or interacts with an automatic drug recognition capability based upon a machine readable label or data carrier. Ford 2:54-62.

03. Ford describes access to the computer interface program itself being permitted only to persons who are identified in the user file

and who provide the private password assigned to them. Ford 18:60-67.

04. Ford describes how, whenever a user creates or modifies a file, the program erases the entries in approval field and updates the information in author field. Thus, the act of modifying a file after it has been approved for loading into a pump cancels the approval. Before that file can be loaded into a pump it must again be authorized by an appropriate person. Ford 20:8-20.

Fujimoto

05. Fujimoto is directed to a home medical system by which a patient can measure the daily condition of disease or health at home to undergo a check or an inquiry diagnosis by a medical specialist. Fujimoto 1:66 - 2:4.

ANALYSIS

Claim 1 recites a dialysis system physically spread over three places with a communication link connecting them. Limitation [5] recites that as information on the execution of an instruction is input at the patient's place, the execution of that instruction is acknowledged by the executing person acknowledging his or her identity at the ID input device.

The rejections are over obviousness and the dispositive issue is whether the Examiner presented a prima facie case as to the acknowledgement in limitation [5] of claim 1. A similar limitation is in each of the remaining independent claims 11 and 17 as well. We find the Examiner has not done so.

The Examiner cites Ford 18:60-68 (Answer 5) as support in the rejection and adds Ford 20:8-20 as support in the Answer's Response section at 11.[2] Ford describes using a software library to direct an electronic medical infusion pump. These portions describe conventional password protection (FF 03) and the use of such protection when security has been potentially breached (FF 04). In both instances, the user information is provided prior to executing an instruction, to prevent unauthorized access to those instructions.

In contrast, the claim requires that the execution of an instruction be acknowledged by the entry of user identification, i.e. after rather than before execution. The reason is simple and made clear at Specification 10:20 - 11:11. Unlike Ford, which uses software instructions which drive a computer's operations automatically, necessitating stringent precautions before those instructions commence, the instructions in claim 1 are meant to be performed by a human operator in the operation of a machine. The acknowledgement in claim 1 is the acknowledgement that the operator actually performed what was instructed, since the machine cannot necessarily confirm such performance automatically

The Examiner acknowledges as much at the Response section at Answer 11, since the portion of Ford cited in the rejection analysis only speaks to

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[2] The Examiner expresses the finding regarding limitation [5] as a taking of Official Notice (Answer 5) but immediately adds that this is evidenced by Ford. Thus, we take the Examiner's Official Notice to be that of the practice described by Ford, rather than the specific language recited in the claim. We agree that Ford's use of user identifiers and passwords as gatekeepers for sensitive computer operations is well known, but as we find *supra*, this is not what the claim recites.

conventional pre-authorization password control, but then the Examiner finds that in the particular instance in which Ford's instruction file is edited, Ford requires entry of the user identification and password prior to the edits being loaded and that this acknowledges the original file having been once loaded at a prior time. While this certainly implies that such a file was loaded at some earlier time, it does not acknowledge that loading.

To acknowledge in the context of claim 1 is to express recognition of.[3] The existence of an implication of some circumstance at some point in the past is not the expressing recognition of that circumstance. Acknowledgement requires a recognition between the act reported on and the reporting that mere inherent implication does not. Certainly such a construction of inherent implication has nothing in common with the use of that term in the Specification, and although limitations are not imported from the Specification, claim construction must be reasonable in light of the Specification.

The Examiner also apparently concludes that limitation [5] can be effectively anticipated by any computer including that in Ford because the use of the word "configured" means that so long as a computer can be programmed to perform a step, that computer reads on such a step. We find that contrary to the Examiner's analysis at Answer 11, the claim does not recite "can be configured", but rather "is configured." Thus, the configuration recited must be found in the prior art to support a prima facie case.

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[3] *American Heritage Dictionary of the English Language* (4th ed. 2000).

As this issue disposes of the case, we need not reach the Appellants' remaining arguments.

CONCLUSIONS OF LAW

The Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 103(a) as unpatentable over Hogard, Ford, and Fujimoto.

DECISION

Our decision is that the rejection of claims 1-20 under 35 U.S.C. § 103(a) as unpatentable over Hogard, Ford, and Fujimoto is not sustained.

REVERSED

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